SUPREME COURT
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1338

JACK MASCHHOFF, *Petitioner,*

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 22 of the NEWSPAPER GUILD, a/k/a NEWSPAPER GUILD OF DETROIT, and EMIL MAZEY, *Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## JOINT BRIEF IN OPPOSITION FOR RESPONDENTS

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### COUNTERSTATEMENT OF THE QUESTION PRESENTED

Petitioner lost on summary judgment. He filed a motion under Local Rule IX-A of the Eastern District of Michigan, without moving under F.R. Civ. Pro. 59(c). On denial, 75 days after entry of summary judgment, Petitioner filed his Notice of Appeal. The Court of Appeals dismissed for lack of jurisdiction. F.R.A.P. 4(a), and 28 U.S.C. § 2107.

Does a motion under Local Rule IX-A, when not joined with a motion under F.R. Civ. Pro. 59(e), toll the running of the jurisdictional 30-day appeal period under F.R.A.P. 4(a)?

## COUNTERSTATEMENT OF THE CASE

Petitioner, plaintiff below, was laid off by his employer, the UAW,[1] in 1970. His union, Guild Local 22, grieved the layoff under the collective bargaining agreement, but withdrew the grievance short of arbitration. Maschhoff then sued his employer and union in state court, and defendants removed to the Eastern District of Michigan.

Defendants filed lengthy affidavits, and moved for summary judgment. After argument, the District Court granted summary judgment, holding Maschhoff failed to meet the standard of *Vaca* v. *Sipes,* 386 U.S. 171, 190 (1967).[2] The order was entered April 18, 1975.

On May 2, 1975, Maschhoff moved for rehearing under Local Rule IX-A,[3] *without* joining any other post-

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[1] Respondent Mazey is the Secretary-Treasurer of the UAW.

[2] Reaffirmed by Hines v. Anchor Motor Freight, — U.S. —, 44 U.S.L.W. 2481 (1976).

[3] Local Rule IX-A of the Eastern District of Michigan provides:

"Motions for Rehearing.

1. Time. A motion for rehearing may be filed within 20 days after judgment is entered, unless the Court grants further time upon a motion filed within such 20 days.
2. Form, Certificate. The motion shall briefly and distinctly state the ground, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for purposes of delay. Proof of service upon each adverse counsel must be filed.
3. No Response and No Hearing Allowed. No response to the motion and no oral argument thereon shall be allowed

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judgment motions. On June 4, 1975, the District Court denied rehearing. Some 75 days after the summary judgment, on July 2, 1975, Maschhoff filed his Notice of Appeal.

Defendants filed a motion to dismiss the appeal as untimely. The Sixth Circuit reserved ruling, taking briefs on the merits. It then dismissed the appeal for lack of jurisdiction. The Court of Appeals held that Maschhoff's motion under Local Rule IX-A did *not* toll the running of the 30 days' period under F.R.A.P. 4(a), since no F.R. Civ. Pro. 59(e) motion was filed.[4] Rehearing was denied, and the instant Petition followed.

## ARGUMENT

The proper construction of Local Rule IX-A is, at best, of parochial concern. It is of no consequence beyond the Eastern District of Michigan, and certainly does not merit this Court's attention.

In any such event, the Sixth Circuit's reading is correct. Court of Appeals' jurisdiction is limited and statutory. 28 U.S.C. §2107.[5] Rule 4(a) of the Fed-

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unless the Court, after the filing of the motion, otherwise directs.

4. Grounds. Generally, and without restricting the discretion of the Court, motions for rehearing which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, will not be granted. The movant must not only demonstrate a palpable defect by which the Court and the parties have been misled but also that a different disposition of the case must result from a correction thereof."

[4] The Order is reprinted in the Petition at 36. It is not reported.

[5] In relevant part: ". . . [N]o appeal shall bring any judgment, order or decree in any action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree."

eral Rules of Appellate Procedure[6] lists only four (4) motions which toll the running of the 30-day period. Of the listed motions, only a motion to alter or amend judgment under F.R. Civ. Pro. 59(e) would have been appropriate. Maschhoff simply did not file a Rule 59 (e) motion. The motion he filed would have been untimely as a Rule 59(e) motion, anyway.[7]

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[6] In relevant part:

> ". . . in a civil case . . . in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment or order appealed from . . .
>
> The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Federal Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is entered in the civil docket."

[7] Local Rule IX-A has a 20 day limit, while Rule 59(e) has a 10 day limit. Maschhoff's motion was filed on the 14th day after judgment. F.R.A..P. 4(a) requires a *timely* motion under Rule 59(e).

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## CONCLUSION

For the foregoing reasons, the Court should *deny* the Petition.

Respectfully submitted,

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